ORISSA HIGH COURT
CUTTACK

SECOND APPEAL NO. 158 OF 1987

From the judgment and decree dated 04.04.1987 and 15.04.1987 respectively passed by Sri A.P. Das, Subordinate Judge, Jagatsinghpur in T.A. No.10 of 1983.

Bandhu Das and another ..... Appellants

-versus-

Uttam Charan Pattanaik ..... Respondent

For appellants - M/s Asoke Mukharjee and Somadarsan Mohanty.

For respondent - M/s S.P.Pattnayak, B.Mohanty, N.C.Patnaik and B.Patnaik.

P R E S E N T :

THE HONOURABLE MR. JUSTICE PRADIP MOHANTY

PRADIP MOHANTY, J. This is an appeal under Section 100 of the Code of Civil Procedure. The appellants were the defendants in the trial court against whom the plaintiff-respondent had filed T.S. No.109 of 1981. The said suit was decreed in part. Aggrieved, the plaintiff-respondent filed T.A. No.10 of 1983 before the lower appellate court, which was allowed. The present appeal is against the reversing judgment of the lower appellate court.

2. The suit was filed for declaration of title, confirmation of possession and for permanent injunction. The case of the plaintiff-respondent was that the suit property i.e., C.S. Plot Nos.104 and 105,

originally belonged to one Nimei Charan Pattanaik from whom by registered sale deed dated 12.10.1971 he had purchased the same for good consideration. He got delivery of possession thereof and possessed the same peacefully without any interruption. The defendants having no right, title and interest over the land created disturbances in his possession, for which he filed the above suit. Defendants in their written statement pleaded that they have no title or possession over plot no.105, but have got their residential house on a portion of C.S. Plot No.104 corresponding to Hal Plot No.145 measuring area of Ac.0.05 dec. since more than 45 years.

3. In order to prove his case, the plaintiff examined as many as three witnesses including himself as P.W.3 and exhibited one document, i.e., the sale deed dated 12.10.1971, as Ext.1. Defendants examined three witnesses and exhibited the certified copy of the draft Khatian as Ext.A and the municipal tax receipts of 1980-81 and 1981-82 as Exts. X and Y by the Court.

4. The trial court framed as many as six issues. After considering the pleadings and evidence on record, it decreed the suit in part vide judgment and decree dated 19.02.1983 and 05.03.1983 respectively declaring the title of the plaintiff over Plot No.105 and restraining the defendants from interfering with the possession of the plaintiff over the said plot. It, however, held that the plaintiff was not entitled to any relief in respect of Plot No.104. The following are the findings of the trial court:

(i) The boundary of plot no.104 has not been given separately, but the boundaries of both the plots have been given together.

(ii) Ext.A, the draft Khatian, shows that Hal Plot No.145 is a part of old Plot No.104 and is a homestead land and the residential house of the defendant is standing over part of C.S. Plot No.104.

(iii) The plaintiff has not taken an Amin. The suit land which the plaintiff claims cannot be identified.

5. Being aggrieved by the aforesaid judgment and decree, the respondent preferred T.A. No.10 of 1983 which was heard by the loearned Subordinate Judge, Jagatsinghpur. The appellate court reversed the judgment and decree of the trial court vide its judgment and decree dated 04.04.1987 and 15.04.1987 respectively. The following are the findings of the appellate court:

(i) Identity of the suit land in Plot No.104 has been properly reflected in the sale deed.

(ii) Sale deed in question and delivery of possession in favour of the plaintiff have not at all been challenged by the defendants.

(iii) Nowhere it has been pleaded or proved that the land of the plaintiff measuring Ac.0.04 dec. is the same land, which was either gifted to or possessed by the defendants.

(iv) Gift in question is not at all established.

(v) No effort is made by the defendants to show that the land claimed by the plaintiff was possessed by them for more than 12 years.

6. Mr. Mukharjee, learned counsel appearing for the appellants, has submitted that none of the aforesaid findings of the lower appellate court is sustainable. Any finding as to the location of the suit land could bind the appellant. He further submitted that the description as reproduced from the plaint in relation to the settlement map has not been given. The boundaries of the disputed land have not been mentioned. Further, the suit is bad for lack of identification of the suit land. In support of his submission, Mr. Mukharjee has relied upon the decisions of this Court in ***Dwaraka alias Dwaraka Prasad Agarwalla v. Mst. Sashiprabha Gountiani***, 32 (1966) CLT 864; and ***Lucy Narona v. Sri Raghunath Jew Bije, Chhauni Math, represented through Mohant Ajodhyanath Das***, 74 (1992) C.L.T. 463.

7. Although Mr. S.P.Pattanayak and associates had entered appearance on behalf of the respondent, none was present at the time of final hearing of the appeal.

8. On perusal, it is found that at the time of admission of the appeal, as many as five substantial questions of law were formulated for consideration. But, on consideration of the pleadings, evidence on record and submissions made, the only substantial question of law that arises for consideration is "whether for non-description or insufficient identification of a land without specific boundary and plot number in the settlement record, the suit is maintainable".

9. For better appreciation of the point involved, the provisions of Order 7 Rule 3 C.P.C. is quoted hereunder :

> "**Where the subject-matter of the suit is immovable property-** Where the subject-matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it, and, in case such property can be identified by boundaries or numbers in a record of settlement or survey, the plaint shall specify such boundaries or numbers."

A bare reading of the above provision makes it is crystal clear that what exactly the land or the area over which the dispute exists is a question which goes into the root of the matter relating to subsistence of the case. In absence of such description in the plaint or supply of the map by annexing the same to the plaint and the evidence to the above effect, no court would pass a decree, as such a decree would be inexecutable or would be rendered otiose. Even if the court finds that the plaintiff had title and possession in respect of the suit land, in absence of proper description, as mentioned in Order 7 Rule 3, C.P.C., the decree cannot be executed. The defendants in the written statement took a specific objection that the suit is bad for lack of identification. From the description as

reproduced in the plaint, the measurement of the disputed land in relation to the settlement map has not been given nor has the sketch map been drawn to scale. The boundaries of the disputed land have not been mentioned. For both the plots, one boundary has been mentioned. Admittedly, the disputed plot is a part of Sabik Plot No.104. P.W.2 in his evidence has specifically stated that the suit land is scattered in three places. In his cross-examination also he stated that he could not say the plot number, boundary and the extent of land. In view of the above, this Court feels that the decree is not executable and the suit is incompetent for want of proper description and sufficient identification.

10. In the result, the appeal is allowed. The judgment and decree passed by the lower appellate court are set aside and those passed by the trial court is confirmed. No costs.

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PRADIP MOHANTY, J.

Orissa High Court, Cuttack.
May 10, 2006/**G.D.*Samal.***